

MISCELLANEOUS CIVIL.

Before Mr. Justice King.

MATLOOB HASAN AND OTHERS (PETITIONERS) v.

KALAWATI AND OTHERS (OPPOSITE PARTIES).*

1930
July, 29.

Land Revenue Act, U. P. (Local Act III of 1901), sections 111, 112 and 233 (k)—Partition of mahal—Stay of proceedings—Question of proprietary title raised in partition—Suit filed in civil court by direction of revenue court—Appeal pending from decision of civil court—Whether appellate court can stay the proceedings before the partition officer—Jurisdiction—Civil Procedure Code, section 151; order XXXIX, rule 1.

A question of proprietary title was raised upon an application for partition of a mahal and the Assistant Collector, acting under section 111(1)(b) of the Land Revenue Act, required the applicant for partition to institute a suit in the civil court for determination of the question of title. A suit was accordingly instituted and the civil court decided the question in the applicant's favour. An appeal from that decision was filed in the High Court by the objector defendant. While the appeal was pending, the Assistant Collector resumed proceedings in the partition case and proceeded to deal with it in accordance with the decree of the civil court of first instance. The appellant applied to the High Court to have the partition proceedings in the revenue court stayed pending decision of the appeal.

Held that the High Court had no jurisdiction to stay such proceedings of the revenue court. If the Assistant Collector had elected to proceed under section 111(1)(c) of the Land Revenue Act and had himself decided the question of title, then under section 112 the High Court could have issued a precept to him to stay proceedings pending decision of the appeal. But in the circumstances of the present case the High Court was not empowered by any provision of the Civil Procedure Code to stay the proceedings of a revenue court, which was not subordinate to the High Court. Neither order XLI, rule 5, nor order XXXIX, rule 1, could apply, nor was it a case in which the exercise of any inherent powers

*Application in First Appeal No. 204 of 1930.

could be contemplated. Further, the application was expressly barred by the provisions of section 233 (k) of the Land Revenue Act; the application was a "proceeding" with respect to the partition of mahals, and there was nothing in section 111 or 112 which conferred jurisdiction upon a civil court to take cognizance of it.

Messrs. *Iqbal Ahmad, Mukhtar Ahmad* and *Mansur Alam*, for the applicants.

Mr. *Shabd Saran*, for the opposite parties.

KING, J. :—This is an application for stay of further proceedings in a partition case pending before an Assistant Collector of Moradabad. In this case it appears that an objection was made involving a question of proprietary title, and the court took action under section 111(1)(b) of the Land Revenue Act, 1901, and required the applicant for partition to institute within three months a suit in the civil court for the determination of such question. The applicant for partition accordingly did institute a suit in the civil court and got a declaration of title in her favour. An appeal from this civil court decree has been filed and is now pending before the High Court. Meanwhile the Assistant Collector is continuing the partition proceedings in accordance with section 111(2), that is to say, he is dealing with the case in accordance with the decision of the civil court, i.e., the civil court of first instance. The appellant before this Court prays that the partition proceedings in the revenue court may be stayed, pending decision of the appeal. It appears to me that the High Court has no jurisdiction to stay such proceedings of the revenue court. If the Assistant Collector, instead of referring the question of proprietary title to the civil court for determination, had elected to inquire into the merits of the objection himself, as he was authorized to do under section 111(1) (c), and had passed a decree, then under section 112 the High Court

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could have issued a precept to the Collector desiring him to stay partition pending the decision of an appeal against the decree. It is argued that if the High Court can stay the partition pending an appeal against the Assistant Collector's decision, it would be very anomalous if the High Court cannot stay the partition pending an appeal against the civil court's decision. I grant that the position does seem anomalous. I do not know why the legislature has thought fit to empower the High Court to stay the partition in the former case only, and not in the latter. The reasons for staying partition might be equally cogent in either case. In the case of *Ram Charitra v. Mohan Dei* (1), STUART, J., expressed the view that the revenue court was wrong in completing the partition without awaiting the final decision of the civil court. He held that the revenue authorities "were clearly wrong, and that they did not act in conformity with the provisions of section 111(2), for the case was not dealt with in accordance with the decision of the civil court as there had been no final decision of the civil court."

I think it unnecessary to express any opinion whether the Assistant Collector is exercising a proper discretion, or is acting according to law, in proceeding with the partition case without awaiting the final decision of the civil court, since I think that the High Court has no power to stay proceedings.

In the first place there is nothing in the Code of Civil Procedure applicable to the facts of this case. Order XLI, rule 5 empowers an appellate court to stay proceedings under a decree appealed from. As the partition proceedings are "in accordance with" the decree under appeal they might be held to be proceedings "under" that decree. But even if this liberal interpretation is accepted, I do not think that order XLI, rule 5 can be construed so as to empower the

(1) (1923) I.L.R., 45 All., 309.

High Court to stay the proceedings of a revenue court, which is not subordinate to the High Court. I think it contemplates proceedings of courts subordinate to the appellate court which passes the order.

It is further suggested that this Court could issue an injunction to the parties to the appeal restraining them from continuing the partition proceedings during the pendency of the appeal. Order XXXIX, rule 1 has no application to the facts of this case, and it is clearly not a case in which the exercise of any "inherent powers" could be contemplated.

In the second place I think this application is expressly barred by the provisions of section 233($\frac{1}{2}$) of the Land Revenue Act. This application is a "proceeding" with respect to the partition of mahals, and there is nothing in section 111 or section 112 which confers jurisdiction upon a civil court to take cognizance of it.

In short the High Court can stay partition proceedings in a revenue court if the terms of section 112 are applicable, but cannot do so in any other circumstances. In the present case the terms of section 112 are not applicable and I hold that the High Court has no jurisdiction to stay the proceedings.

I dismiss the application with costs.

PRIVY COUNCIL.

HAR PRASAD SINGH (PETITIONER) v. JUDGES OF THE HIGH COURT AT ALLAHABAD (RESPONDENTS).

Legal Practitioner—Vakil—Removal from roll—Procedure under Letters Patent, clause 8—Privy Council Practice—Special leave to appeal—Absence of miscarriage of justice.

The High Court made an order under clause 8 of the Letters Patent removing the petitioner from the roll of vakils on charges of professional misconduct, including per-

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Feb., 14.

*Present: Lord MACMILLAN, Sir LANCELOT SANDERSON, Sir GEORGE LOWNDES and Sir DINSHAH MULLA.